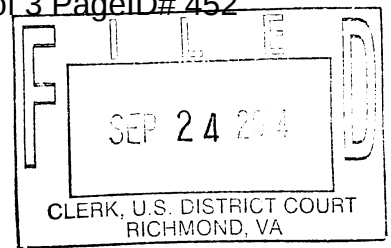


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**



UNITED STATES OF AMERICA

v.

Criminal Action No. 3:08CR32

FREDERICK J. SMITH

MEMORANDUM OPINION

By Memorandum Opinion and Final Order entered on June 17, 2014, the Court denied Frederick J. Smith's motion to vacate under 28 U.S.C. § 2255, and denied Smith's motion for discovery. United States v. Smith, No. 3:08CR32, 2014 WL 2759074, at *10 (E.D. Va. June 17, 2014.) The matter now comes before the Court on Smith's Motion for Reconsideration filed pursuant to Fed. R. Civ. P. 59(e) ("Rule 59(e) Motion," ECF No. 75), Motion for Preservation of Evidence (ECF No. 76), and Motion for Leave to File Supplemental Authorities. (ECF No. 80.) Smith's Motion for Leave to File Supplemental Authorities (ECF No. 80) is granted to the extent that the Court will consider his expanded argument in support of Rule 59(e) relief. Nevertheless, for the reasons set forth below, the Rule 59(e) Motion (ECF No. 75) will be denied.

The Fourth Circuit recognizes three grounds for relief under Rule 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent

manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993) (citing Weyerhaeuser Corp. v. Koppers Co., 771 F. Supp. 1406, 1419 (D. Md. 1991); Atkins v. Marathon LeTourneau Co., 130 F.R.D. 625, 626 (S.D. Miss. 1990)). In his Rule 59(e) Motion, Smith briefly states, without supporting argument, that he is actually innocent, and then proceeds to rehash the merits of his claims brought in his § 2255 Motion. In his Motion for Leave to File Supplemental Authorities, Smith adds that the Court’s determination that Claims One through Seven were defaulted was “unreasonable” (Mot. Leave File Supp’l Auth. 1) and that “[i]neffective assistance of counsel establishes ‘cause’” for his default of his claims. (Id. at 4 (capitalization corrected).) Smith provides no support for these conclusions outside of his attempts to re-litigate arguments from his § 2255 Motion.¹

Smith fails to demonstrate a clear error of law or any other basis for granting relief under Rule 59(e). Accordingly, Smith’s Rule 59(e) Motion will be denied.

¹ The sum of Smith’s claims again advance “Smith’s fanciful account of the events leading to arrest and his theory of fraud” and his continued belief that counsel should have adequately pursued his theory. Smith, 2014 WL 2759074, at *4; (see Mot. Leave File Supp’l Auth. 1-2, 4.) For example, he argues that the police perjured themselves about the events leading to his arrest, the Commonwealth obtained a fraudulent conviction due to the perjury, and counsel erred by failing to obtain police and magistrate reports that could have demonstrated perjury occurred. (Mot. Leave File Supp’s Auth. 3-4.)

Smith also filed a Motion for Preservation of Evidence. (ECF No. 76.) For a third time, Smith suggests that the trial transcripts were altered. Smith now asks for the Court to preserve, review, and evaluate the transcripts and other Court documents "to assess the trial transcript[']s accuracy." (Mot. Preserve 1.) For the reasons previously stated, see Smith, 2014 WL 2759074, at *4 (citing United States v. Smith, 3:08CR32, at 1-3 (E.D. Va. Apr. 8, 2013); United States v. Smith, 546 F. App'x 195, 195-96 (4th Cir. 2013)), Smith's requests related to alleged inaccuracies in the transcript will be denied. Any future request from Smith pertaining to the accuracy of the trial transcripts will be summarily denied.

Smith also asks that the Court order the retention of medical records and police documents pertaining to his arrest, and conduct a review of these records. (ECF No. 76, at 1-3.) Smith's conviction became final in early 2010. Smith provides no authority for the actions he seeks at this late juncture. Accordingly, Smith's Motion for Preservation of Evidence (ECF No. 76) will be denied.

The Clerk is directed to send a copy of this Memorandum Opinion to Smith.

And it is so ORDERED.

_____/s/ REP_____
Robert E. Payne
Senior United States District Judge

Date: September 23, 2014
Richmond, Virginia